

State of Wisconsin



2005 Senate Bill 501

Date of enactment:
Date of publication*:

2005 WISCONSIN ACT

AN ACT *to amend* 767.293 (6), 814.04 (intro.) and 814.29 (3) (a); and *to create* 808.03 (3) and 895.025 of the statutes; **relating to:** damages for frivolous claims.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.293 (6) of the statutes, as affected by Supreme Court Order 03–06, is amended to read:

767.293 (6) Section ~~802.05 (2)~~ 895.025 applies to the filing of an affidavit under this section.

SECTION 2. 808.03 (3) of the statutes is created to read:

808.03 (3) EXCEPTION. Notwithstanding subs. (1) and (2), a judgment or order may not be appealed in an action in which a party makes a claim under s. 802.05, 804.12, or 895.025 until the circuit court has ruled on that claim.

SECTION 3. 814.04 (intro.) of the statutes, as affected by Supreme Court Order 03–06, is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, ~~802.05~~ 895.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

SECTION 4. 814.29 (3) (a) of the statutes, as affected by Supreme Court Order 03–06, is amended to read:

814.29 (3) (a) A request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give

security for costs constitutes consent of the affiant and counsel for the affiant that if the judgment is in favor of the affiant the court may order the opposing party to first pay the amount of unpaid fees and costs, including attorney fees under ss. 802.05 ~~and~~, 804.12 (1) (c), ~~and 895.025~~ and under 42 USC 1988 and to pay the balance to the plaintiff.

SECTION 5. 895.025 of the statutes is created to read:

895.025 Damages for maintaining certain claims and counterclaims. (1) A party or a party's attorney is subject to damages for costs and fees under this section for commencing, using, or continuing an action, special proceeding, counterclaim, defense, cross complaint, or appeal to which any of the following applies:

(a) The action, special proceeding, counterclaim, defense, cross complaint, or appeal was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense, cross complaint, or appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) Upon either party's motion made at any time during the proceeding or upon judgment, if a court finds, upon clear and convincing evidence, that sub. (1) (a) or (b) applies to an action or special proceeding commenced

* Section 991.11, WISCONSIN STATUTES 2003–04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or continued by a plaintiff or a counterclaim, defense, or cross complaint commenced, used, or continued by a defendant, the court:

(a) May, if the party served with the motion withdraws, or appropriately corrects, the action, special proceeding, counterclaim, defense, or cross complaint within 21 days after service of the motion, or within such other period as the court may prescribe, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section. In determining whether to award, and the appropriate amount of, damages under this paragraph, the court shall take into consideration the timely withdrawal or correction made by the party served with the motion.

(b) Shall, if a withdrawal or correction under par. (a) is not timely made, award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action, special proceeding, counterclaim, defense, or cross complaint, including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of this section.

(2m) If a party makes a motion under sub. (2), a copy of that motion and a notice of the date of the hearing on that motion shall be served on any party who is not represented by counsel only by personal service or by sending the motion to the party by registered mail.

(3) If an award under this section is affirmed upon appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for the actual reasonable attorneys fees the party incurred in the appeal.

(4) If the appellate court finds that sub. (1) (a) or (b) applies to an appeal, the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for all the actual reasonable attorneys fees the party incurred in the appeal. An appeal is subject to this subsection in its entirety if any element necessary to succeed on the appeal is supported solely by an argument that is described under sub. (1) (a) or (b).

(5) The costs and fees awarded under subs. (2) to (4) may be assessed fully against the party bringing the action, special proceeding, cross complaint, defense, counterclaim, or appeal or the attorney representing the party, or both, jointly and severally, or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(6) This section does not apply to criminal actions or civil forfeiture actions. Subsection (4) does not apply to appeals under s. 809.107, 809.30, or 974.05 or to appeals of civil forfeiture actions.

SECTION 6. Initial applicability.

(1) This act first applies to actions or special proceedings that are commenced or continued after the effective date of this subsection.